

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11241 of 2019

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Soni Sharma, Wife of Ajay Sharma, Resident of Village-Narayanpur, P.S. Shakurabad, District-Jehanabad Presently residing at Plot No.134, Gali No. 104, Kailashpuri Extention, New Delhi.

... .. Petitioner

Versus

1. The Managing Director, Bank of India, Star House, C-5, G-Block, Bandra Kurla Complex, Bandra East, Mumbai-400051 (Maharashtra)
2. The Zonal Manager, Bank of India, Chanakya Place, Veerchand Patel Marg, Patna, Bihar, 800001.
3. The Branch Manager, Bank of India, Makhdoompur Branch, Jehanabad, Bihar.
4. The Authorised Officer, Bank of India, Makhdoompur Branch, Jehanabad, Bihar.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Vinay Mistry, Advocate
For the Respondent/s : Mr.Ajay Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 19-09-2019 Let the counter affidavit filed on behalf of the Bank

be taken on the record.

Perusal of the writ application shows that the petitioner is in fact aggrieved by the sealing of her residential house which is admittedly a mortgaged property with the Bank. The counter affidavit shows that the action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'Act of 2002') was taken against the secured asset in terms of Section 13(4) of the Act of 2002. A copy of the



possession notice is Annexure 'R/2' to the counter affidavit.

Learned counsel for the Bank has also informed that the Respondent-Bank took physical possession of the property on 01.03.2019 and has thereafter notified the property for the e-auction sale. The first e-auction sale notice was published as back as on 09.11.2017 but the e-auction could not take place on the said auction.

Be that as it may, so far as the present writ application is concerned, it cannot be entertained as the remedy of the petitioner lies under the Act of 2002 itself before the Debts Recovery Tribunal. In the scheme of the Act of 2002 where a special forum has been created to consider an objection taken by a borrower/guarantor against the SARFAESI action and in catena of decisions right now from the case of **United Bank of India Vs. Satyawati Tondon & Ors.** reported in **(2010) 8 SCC 110** when it has been held by the Hon'ble Apex Court that it would not be just and proper for a writ court to entertain the writ application, this Court finds no reason to entertain the present writ application. Paragraph '43' of the judgment of the Hon'ble Apex Court in the case of **Satyawati Tondon** (supra) is quoted hereinunder for a ready reference :-

“43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article



226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.”

In the given facts and circumstances, the writ application is not entertained leaving it open for the petitioner to seek her remedy before the appropriate forum in accordance with law and if such remedy is applied for and a question of limitation arises for consideration, the same will be considered keeping in view the period spent by the petitioner before this Court.

The writ application is disposed off accordingly.

(Rajeev Ranjan Prasad, J)

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